

NH Division of Historical Resources

State of New Hampshire O Department of Cultural Resources

Box 2043 O Concord NH 03302-2043

603-271-3483 O 603-271-3558 O FAX 603-271-3433 O Voice/TTY Relay Access
1-800-735-2964

preservation@nhdhr.state.nh.us

August 8, 2003

Marlene H. Dortch, Secretary

Office of the Secretary

Federal Communications Commission

445 12th Street, S.W.

Washington DC 20554

RE: WT Docket No. 03-128

Nationwide Programmatic Agreement

Regarding the Section 106 National Historic Preservation Act Review
Process

Dear Ms. Dortch:

The New Hampshire Division of Historical Resources (State Historic
Preservation Office) wishes to offer comments regarding the Proposed
Nationwide Programmatic Agreement referenced above, the subject of a
Notice of Proposed Rulemaking released by the Federal Communications
Commission on June 9, 2003.

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a.. Comments on Appendix A: Nationwide Programmatic Agreement=85
b.. Comments on Attachment 3: Submission Form/Packet for Nationwide
and Collocation Agreements
c.. Comments on Notice of Proposed Rulemaking, dated June 9, 2003
Appendix A: Nationwide Programmatic Agreement Regarding the Section 106
National Historic

Preservation Act Review Process

Page A-3 Paragraph 5

The NH DHR / SHPO welcomes the fifth "Whereas" clause: "WHEREAS, the
execution and implementation of this Nationwide Agreement will not
preclude Indian tribes or NHOs, SHPO/THPOs, local governments, or
members of the public from filing complaints with the Commission or the
Council regarding effects on Historic Properties from any Facility or
any activity covered under the terms of the Nationwide Agreement."

Page A-8 & A-9 III.A.4. and III.A.5.

The NH DHR / SHPO strongly objects to the language and intent of these exclusion clauses. In New Hampshire, the distances would not provide sufficient protection from visual effects for historic properties. For example, New Hampshire is traversed by Interstate 93, which passes through many historic communities and is adjacent to historic properties and districts of many different types, including the world-famous Amoskeag Millyard in Manchester. Active railroad service connects many of our historic communities and is being expanded to link others into the rail system. The caveats in Section 5 are not adequate to protect the historical values of such resources.

Page A-9 III.A.5.

The NH DHR / SHPO strongly supports the SHPO "opt out" proposal offered by the National Conference of State Historic Preservation Officers (NCSHPO), as described in Footnote #5. Furthermore, in contrast to CTIA=92s position, we are confident that the "opt out" provisions would NOT result in an additional 12-18 month negotiation process with each state. The NH DHR/SHPO also strongly supports the NCSHPO comments #9, #10, and #11 in the NCSHPO comment letter to the Commission dated July 30, 2003.

Page A-15 & 16 V.B.

The NH DHR / SHPO requests that at a minimum, public notice be provided through local land use procedures and notification requirements, or published in local newspapers; alternative means to provide notice to the public should be in addition to the minimum requirements, not a substitute for them.

Page A-16 V.E.

The NH DHR / SHPO requests that ALL comments received by the Applicant be forwarded to the SHPO, because the SHPO is more qualified to determine whether a comment "does not substantially relate to potentially affected Historic Properties."

Page A-16 & 17 The NH DHR / SHPO strongly supports the position of the Ohio SHPO stated in Footnote #11, regarding its objection to a blanket provision for the confidentiality of "proprietary" information on the part of the carriers, and regarding the difficulties this would present for SHPOs subject to strong state-level FOIA requirements.

Page A-17 & 18 VI.B.2.a.

The NH DHR / SHPO strongly objects to the limited distances stipulated for presumed APEs for visual effects. Much of New Hampshire has hilly or mountainous terrain, which foreshortens the view of distant objects such as towers and antennas. In addition, all of New Hampshire=92s communities, including its few cities =96 which are small by national standards =96 are located in scenic and historic settings characteristic of rural historic districts, which have high value for tourism, the mainstay of our economy. Based on several years of experience with reviews of communications towers in New Hampshire, a 1.5 mile radius (3

mile diameter) from a tower (irrespective of its height) is a workable APE. We recognize that this may not be true in other states, which further emphasizes the need for the SHPO "opt-out" provisions requested by NCSHPO, and the alternative APE provisions in VI.B.2.b.

Page A-18 VI.B.2.b.

The NH DHR / SHPO commends and supports the provisions for Applicants and SHPOs to mutually agree to an alternative APE.

Page A-19 VI.D.2.

The NH DHR / SHPO requests that differences of opinion between Applicants and SHPOs regarding eligibility of a resource for listing in the National Register shall be submitted to the Keeper of the National Register (consonant with the provisions of 36 CFR Part 800), and not the Commission, which does not have the same level of experience and expertise as the National Register program for evaluating the eligibility of resources for the National Register.

Page A-19 VI.E.3.

The NH DHR / SHPO requests that in line #7, the phrase "but are not limited to" be added after "Examples include:."

Page A-19 & A-20 The NH DHR / SHPO strongly opposes the language proposed by the PCIA in Footnote #13.

Page A-20 VII.

The NH DHR / SHPO strongly agrees with the NCSHPO comment #24 in its July 30 letter to the Commission, so that SHPOs as well as Applicants should have the ability to contact the Commission if a failure to agree occurs.

Page A-21 & A-22 VII.C.3., 5., and 6.

The NH DHR / SHPO commends and supports provisions to seek good faith resolution of potential Adverse Effects as outlined in C.3., C.5., and C.6.

Page A-22 VII.D.

The NH DHR / SHPO commends and supports provisions for resolving Determinations of Adverse Effect outlined in D.1., D.2., D.3., D.4., and D.5.

Page A-24 IX.A.

The NH DHR / SHPO requests for Post-Review Discoveries that Applicants shall also be directed to seek input of Consulting Parties and, if the SHPO recommends, the public.

Page A-25 X.C.1.

Please explain how a compliant could "not make out a probable violation of Section 110(k) even if the allegations are taken as true."

Page A-24 to A-26 X.A. through X.G.

Subject to the clarification requested for X.C.1., the NH DHR / SHPO commends and supports the provisions for compliance with Section 110(k) as specified in X.A. through X.G.

Attachment 3 Submission Form/Packet for Nationwide and Collocation Agreements

Form NT The NH DHR / SHPO requests that balloon or crane tests be a required submission item in Form NT unless the SHPO waives the requirement for individual applications. Although balloon and crane tests are imperfect tools, within their recognized limitations they remain the easiest and simplest ways to quickly assess visual effects, particularly in landscapes such as those in New Hampshire, with their highly varied topography.

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Notice Notice of Proposed Rulemaking, dated June 9, 2003

Page 3, II.4. The NH DHR / SHPO recommends that Section 106 reviews in process at the time a Nationwide Agreement becomes effective should continued to be processed under the procedures in effect at the time the review began.

Sincerely,

Linda Ray Wilson

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Deputy State Historic Preservation Officer

cc: James McConaha, Director, NH DHR / NH State Historic Preservation Officer

Edna M. Feighner, DHR Review & Compliance Coordinator

xc: Qualex International

Portals II

445 12th Street, S.W.

CY-B402

Washington DC 20554

Fax 202-863-2898

E-mail qualexint@aol.com

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Filing
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<DATE>8/8/2003
<NAME>
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Ray Wilson
<ADDRESS1>NH Division of Historical

Resources
<ADDRESS2>PO Box

2043
<CITY>Concord
<STATE>NH
<ZIP>03301
<

;LAW-FIRM>
<ATTORNEY>
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<CONTACT-EMAIL>lwilson@nhdhr.state.nh.us
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NH

Division of Historical Resources</P>

<P>State of New Hampshire <FONT face=3D"Monotype Sorts"

size=3D2>0 Department of
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<P>Linda Ray Wilson</P></I><FONT face=3D"Book Antiqua"

size=3D2>

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<P>Deputy State Historic Preservation Officer</P>

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<P>xc: Qualex International</P>

<P>Portals II</P>

<P>445 12th Street, S.W.</P>

<P>CY-B402</P>

<P>Washington DC 20554</P>

<P>Fax 202-863-2898</P>

<P>E-mail <FONT face=3D"Book Antiqua"

size=3D2>qualexint@aol.com</P><FONT face=3D"Book Antiqua"

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